

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
TIMOTHY C. PIGFORD, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	97-1978 (PLF)
DAN GLICKMAN, SECRETARY,)	
THE UNITED STATES DEPARTMENT)	
OF AGRICULTURE,)	
)	
Defendant.)	
_____)	
CECIL BREWINGTON, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	98-1693 (PLF)
DANIEL R. GLICKMAN,)	
)	
Defendant.)	
_____)	

SECOND AMENDED SUPPLEMENTAL PRIVACY ACT PROTECTIVE ORDER

Upon the request of the parties in the above-captioned matters, and pursuant to the provisions of Section 3(b)(11) of the Privacy Act of 1974, 5 U.S.C. § 552a(b)(11),

IT IS HEREBY ORDERED that, in any adjudication or arbitration conducted pursuant to ¶¶ 9-10 of the Consent Decree entered in these actions on April 14, 1999, defendant and his counsel are authorized to release to the adjudicator of Track A claims in accordance with ¶ 8 of the Consent Decree; the arbitrator of Track B claims in accordance with ¶ 10 of the Consent Decree; plaintiffs' counsel; the Monitor established by

¶ 12 of the Consent Decree; court reporters hired to transcribe Track B depositions and/or proceedings; government contractors hired to assist defendant or his counsel with the collection of relevant documents and/or the preparation of defendant's response to Track A and Track B claims; former employees of the U.S. Department of Agriculture ("USDA") who may have knowledge relevant to Track A and Track B claims; and to this Court, (1) USDA's files, or information and/or material contained in those files, of class members, and (2) the USDA files, or information and/or material contained in those files, relevant to class members' claims, including the files, or information and/or material contained in those files, of individuals identified by class members as similarly situated white farmers, without obtaining prior written consent of the individuals to whom such files pertain. In addition, Defendant and his counsel are authorized to release to a class member USDA's files, or information and/or material contained in those files, of that class member. Such disclosures are subject to the following conditions:

1. Records that identify specific individuals shall be stamped "PRODUCED SUBJECT TO PROTECTIVE ORDER" and may be used only for the purposes of adjudication and arbitration of individual claims in accordance with the Consent Decree in these actions and in accordance with the terms of paragraphs 2 and 3 below. These records and all copies thereof must be returned to defendant or destroyed no later than 30 days after all claims under Track A and Track B of the Consent Decree have been

resolved. Should the adjudicator, arbitrator, plaintiffs' counsel, Monitor, court reporter, government contractor, former USDA employee, or class member elect to destroy the documents rather than return them, he/she shall certify in writing to the defendant that all such documents and copies thereof have been destroyed. Except as provided in ¶ 5, below, any documents created by the adjudicator, arbitrator, plaintiffs' counsel, the Monitor, court reporters, government contractors, former USDA employees, or class members containing information derived from records produced pursuant to this Order must be destroyed no later than 30 days after all claims under Track A and Track B of the Consent Decree have been resolved.

2. Except as provided in ¶¶ 3 and 5 below, records produced pursuant to this Order may be disclosed by the adjudicator, arbitrator, plaintiffs' counsel, the Monitor, court reporters, government contractors, former USDA employees, and class members only to persons regularly in the employ of such persons who have a need for the information in the performance of their duties that relate to the adjudication and/or arbitration of individual claims in accordance with the Consent Decree in these actions. All individuals obtaining access to the records produced pursuant to this Order shall be required to sign the attached Acknowledgment Form indicating that they have read, and agree to abide by, the terms of this Order. Such Acknowledgment Form(s) shall be retained by the adjudicator, arbitrator, plaintiffs' counsel, the Monitor, court reporters,

government contractors, and former USDA employees, and class members and be available to defendant upon request.

3. Plaintiffs' counsel and defendant's counsel may disclose records produced pursuant to this Order to experts engaged by plaintiffs proceeding under Track B or experts engaged by defendant for the purposes described in Fed. R. Civ. P. 26(b)(4)(A)-(B), provided that any such expert has previously executed a copy of the attached Acknowledgment Form. Such Acknowledgment Form(s) shall be retained by plaintiffs' counsel and be available to the defendant upon request.

4. Any filings with the Court that contain information produced pursuant to this Order shall be made under seal and shall be identified as containing information that is subject to this Order. A redacted version with as few redactions as possible should be filed on the public record.

5. The adjudicator and arbitrator are authorized to include in written decisions issued pursuant to ¶ 9(a)(ii) & 9(b)(ii) and ¶ 10(g)(i) of the Consent Decree: (1) material derived from records and/or information released pursuant to this Order concerning the class member whose claim is the subject of the decision; and (2) material derived from records and/or information released pursuant to this Order concerning other individuals, provided that no such individual shall be referenced in any such decision by name or any other unique identification that is likely to disclose his/her identity. The adjudicator and arbitrator may release such written decisions only to the class member, his/her attorney, class counsel,

defendant's counsel, counsel representing other class members in the above-captioned actions (but only after they have signed the Second Amended Supplemental Privacy Act Protective Order), USDA, the Monitor, and the Court. Such decisions may be used only in these actions and may not be released or disseminated otherwise.

SO ORDERED

**Paul L. Friedman
United States District Judge**

Dated:

Approved:

FOR THE PLAINTIFFS:

ALEXANDER J. PIRES, JR.
Conlon, Frantz, Phelan & Pires
1818 N. Street, N.W., Suite 700
Washington, D.C. 20036

PHILLIP L. FRAAS
1025 Thomas Jefferson Street, N.W.
Suite 407 West
Washington, D.C. 20007

Dated: June __, 2000

FOR THE DEFENDANT:

MICHAEL SITCOV
CAROLINE LEWIS WOLVERTON
U.S. Department of Justice
Civil Division
P.O. Box 883
Washington, D.C. 20044

Dated: June __, 2000

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Defendant.)
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**ACKNOWLEDGMENT OF SECOND AMENDED SUPPLEMENTAL
PRIVACY ACT PROTECTIVE ORDER**

I, _____, hereby
acknowledge that I have read and understand the Second Amended
Supplemental Privacy Act Protective Order entered in these
actions, a copy of which is attached hereto. I hereby agree to
be bound by the terms of the Order. Specifically,

1. I agree that I will use records and information
protected by the Supplemental Privacy Act Protective Order only
for purposes of these actions, including implementation of the
Consent Decree approved by the Court on April 14, 1999, and not
for any other purpose;

2. I agree that, except as provided in ¶ 6, below, these records and information, and all copies thereof that are in my possession, will be returned to the defendant or destroyed within 30 days after the resolution of the claims under Track A and Track B, as provided in ¶¶ 9-10 of the Consent Decree. If the adjudicator, arbitrator, a plaintiff's counsel, class counsel, the Monitor, an expert, a government contractor, a former employee of the U.S. Department of Agriculture ("USDA"), a court reporter, or a class member elects to destroy the documents, he/she will so certify in writing to the defendant;

3. I agree that, except as provided in ¶ 6, below, any documents created by the adjudicator, arbitrator, a plaintiff's counsel, class counsel, the Monitor, an expert, a government contractor, a former USDA employee, a court reporter, or a class member containing information produced pursuant to the Second Amended Supplemental Privacy Act Protective Order and that are in my possession will be destroyed when the claims under Track A and Track B, as provided in ¶¶ 9-10 of the Consent Decree, are resolved, and that the adjudicator, arbitrator, plaintiff's counsel, Monitor, expert, government contractor, former USDA employee, court reporter, or class member will so certify to the defendant;

4. I agree that, except as provided in ¶ 6, below, I will disclose records and information protected by the Second Amended Supplemental Privacy Act Protective Order only to the Court, the adjudicator, the arbitrator, defendant's counsel, plaintiffs' counsel, class counsel, the Monitor, experts engaged by

plaintiffs proceeding under Track B or experts engaged by defendant for the purposes described in Fed. R. Civ. P. 26(b)(4)(A)-(B), government contractors hired to assist defendant or his counsel with the collection of relevant documents and/or the preparation of defendant's response for Track A and Track B claims, former employees of USDA who may have knowledge relevant to Track A and Track B claims, court reporters hired to transcribe Track B proceedings, experts hired for this case by plaintiffs proceeding under Track B, class members, and persons regularly in the employ of such persons who have a need for the information in the performance of their duties that relate to the adjudication and/or arbitration of individual claims in accordance with the Consent Decree in these actions and who (with the exception of the Court, the Monitor, her staff, and the defendant or defendant's counsel) have signed an Acknowledgment Form like this one;

5. I agree that any filings with the Court that contain records or information produced pursuant to the Second Amended Supplemental Privacy Act Protective Order shall be made under seal and shall be identified as containing information that is subject to this Order;

6. I agree that written decisions issued pursuant to ¶ 9(a)(ii) and 9(b)(ii) and ¶ 10(g)(i) of the Consent Decree may contain material about class members and other individuals that is derived from records and/or information released pursuant to the Second Amended Supplemental Privacy Act Protective Order, provided that such other individuals are not referenced by name

or any other unique identification that is likely to disclose their identity. I agree that such written decisions may be released only to the class member whose claim is addressed in the decision, his/her attorney, class counsel, defendant's counsel, counsel representing other class members in the above-captioned actions (but only after they have signed the Second Amended Supplemental Privacy Act Protective Order), USDA, the Monitor established in ¶ 12 of the Consent Decree, and the Court. I further agree that such written decisions may be used only in these actions and may not be released or disseminated otherwise; and

7. I hereby confirm that my duties under this Acknowledgment shall survive the resolution of all claims under Track A and Track B of the Consent Decree and are binding upon me for all time.

Dated: _____

(Signature)

(Printed Name)

(Address)